DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Employment Services, pursuant to the authority set forth in sections 11 and 14 of the Accrued Sick and Safe Leave Act of 2008 (Act), effective May 13, 2008 (D.C. Code § 32-131.10 and 131.13 (2008 Supp.) and Mayor's Order 2008-153, dated November 6, 2008, hereby gives notice of the adoption of a new Chapter 32 entitled "Accrued Sick and Safe Leave" to Title 7 ("Employment Benefits") of the District of Columbia Municipal Regulations (DCMR). These rules implement the provisions of the Accrued Sick and Safe Leave Act, excepting §15 of the Act.

Notice of Proposed Rulemaking was published in the *D.C. Register* on February 5, 2010 (57 DCR 1246). Comments were received and considered. No substantive changes were made to the text of the proposed rules. A technical change having no substantive impact was made. Additionally, the Accrued Sick and Safe Leave Act Regulations Approval Resolution of 2010 (PB 18-0716) was submitted to the Council on February 2, 2010. The Council has neither approved nor disapproved during the required 30 day period of Council review and the rules are therefore deemed approved pursuant to section 14 of the Act. These rules shall become effective on the date of publication of this notice in the D.C. Register.

Title 7 (Employment Benefits) of the DCMR is amended by adding a new Chapter 32 to read as follows:

CHAPTER 32 ACCRUED SAFE AND SICK LEAVE

3200 PURPOSE AND SCOPE

3200.1 The purpose of this Chapter is to establish standards and procedures for the implementation of the Act.

3200.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be determined in accordance with these regulations.

3201 **PROVISION OF PAID LEAVE; AMOUNT OF PAID LEAVE**

3201.1 An employee shall begin to accrue paid leave pursuant to the Act and this Chapter on the date the individual qualifies as an employee provided, that accrual shall not commence prior to November 13, 2008.

3201.2 An employer employing one hundred (100) or more employees in the District of Columbia shall provide each employee not less than one (1) hour of paid

leave for each thirty-seven (37) hours worked, not to exceed seven (7) days of paid leave per calendar year.

3201.3 An employer employing from twenty-five (25) to ninety-nine (99) employees in the District of Columbia shall provide each employee with not less than one (1) hour paid leave for every forty-three (43) hours worked, not to exceed five (5) days of paid leave per calendar year.

3201.4 An employer employing twenty-four (24) or fewer employees in the District of Columbia shall provide not less than one (1) hour of paid leave for every eighty-seven (87) hours worked, not to exceed three (3) days of paid leave per calendar year.

3201.5 For purposes of subsections 3201.2- 3201.4, the number of employees employed by an employer shall be average number of monthly full-time equivalent employees it employed in a preceding calendar year. This number shall be computed by adding the total number of full-time equivalent employees employed in the District of Columbia at the beginning of each month of the preceding calendar year and dividing by 12.

3201.6 The employment location of an employee shall be determined in accordance with the definition of the term "employee".

3202 **EXCEPTIONS TO CALCULATION OR PROVISION OF PAID LEAVE**

3202.1 An employee who is exempt from overtime payment by reason of section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*) shall not accrue leave pursuant to this chapter for hours worked beyond a forty (40) hour work week.

3202.2 An individual who works for an employer both as an employee and in a non-covered employment position shall accrue paid leave for the hours worked as an employee.

3202.3 If the employee does not suffer a loss of income when absent from work for the number of days of paid leave provided in § 3201, the employer shall not be required to provide paid leave to the employee as would have been otherwise required by the Act.

3203 **USES OF PAID LEAVE**

3203.1 An employee may use paid leave for the following reasons:

(a) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(b) An absence resulting from obtaining professional medical diagnosis or care or preventive medical care for the employee; or

(c) An absence for the purpose of caring for a family member who has any of the conditions or needs for diagnosis or care described in paragraphs (a) and (b) of this subsection.

3203.2 An employee may also use paid leave for an absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse and the absence is directly related to medical, social, or legal services pertaining to the stalking, domestic violence, or sexual abuse for the purposes of:

(a) Seeking medical attention for the employee or the employee's family member to treat or recover from physical or psychological injury or disability caused by the stalking, domestic violence, or sexual abuse;

(b) Obtaining services for the employee or the employee's family member from a victim services organization;

(c) Obtaining psychological or other counseling services for the employee or the employee's family member;

(d) The temporary or permanent relocation of the employee or the employee's family member;

(e) Taking legal action, including preparing for or participating in any criminal or civil proceeding related to or resulting from the stalking, domestic violence, or sexual abuse; or

(f) Taking other actions that could be reasonably determined to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or the safety of those who work or associate with the employee.

3204 ACCESSING PAID LEAVE

3204.1 Only an employee may access paid leave.

3204.2 Unused paid leave accrued by an employee during a 12 month period shall carry over annually. An employee shall not use in one year more than the maximum hours accrued pursuant to subsections §3201.2, §3201.3 and §3201.4 of this Chapter unless the employer permits otherwise.

3204.3 Paid leave accrued pursuant to the Act which is unused at the termination or

Resignation of the employee shall not be reimbursed to the employee

3205 LIMITATIONS ON USE OF PAID LEAVE

3205.1 An employee shall not use in any calendar year more paid leave accrued pursuant to the Act than the maximum number of hours that the employee may accrue annually
pursuant to §3201 unless permitted to do so by the employer.

3205.2 If mutually agreed to by both the employer and employee, an employee[i] who chooses to work additional hours or shifts in the employer's same or next pay period in lieu of hours or shifts missed shall not use leave accrued pursuant to the Act in those hours or shifts; provided, however, that the employer does not require the employee to work such additional hours or shifts.

3206 REQUIRED NOTICE TO EMPLOYERS

3206.1 An employee shall provide at least ten (10) days prior written notice to his or her employer of the employee's planned use of paid leave, if the employee is aware of the need to use such paid leave at least ten (10) days before the date on which the paid leave is to be used.

3206.2 If an employee becomes aware of the need to use paid leave less than ten (10) days before the date on which the paid leave is to be used, the employee shall provide written notice to the employer of the need to use the paid leave on the day that the employee becomes aware of the need to use the paid leave or, otherwise as early as possible. If that day is not a business day for the employer, notice shall be given on the next business day.

3206.3 If the need to use paid leave is not foreseeable, the employee shall make an oral request for paid leave prior to the start of the work shift for which the paid leave is requested.

3206.4 If an emergency prevents the employee from making prior notification to the employer of the need to use paid leave, the employer shall be notified prior to the start of the next work shift or within 24 hour of the onset of the emergency, whichever occurs sooner.

3206.5 An employee shall make a reasonable effort to schedule paid leave in a manner that does not unduly disrupt the operations of the employer. If paid leave is requested in a non-emergency situation, the employee shall consult with the employer regarding the date and time of the paid leave to be taken.

3207 FORM OF NOTICE TO EMPLOYERS

3207.1 The employer may prescribe a written notice form for the request of paid leave. Such form shall require only the employee's name, employee identification number (if any), and minimal information needed (e.g., type of leave, or basic reason for leave) to show that the request comes within the Act's coverage, and the date(s) and time of the paid leave to be taken.

3207.2 The leave request form shall not be used as a substitute for medical certification, unless such use is designated by the employer.

3207.3 If the employer prescribes a form, but the form is not reasonably available to the employee, the employee may provide written notice to the employer by setting forth in writing the information required by §3207.1.

3207.4 If the employer has not prescribed a form, the employee may provide written notice to the employer by setting forth in writing the information required by §3207.1.

3208 CERTIFICATION OF LEAVE REQUEST

3208.1 An employer may require that a request for the granting of paid leave for three (3) or more consecutive days be supported by a reasonable certification of the reason given by the employee for requesting the paid leave.

3208.2 A reasonable certification may include:

(a) A signed document from a health care provider affirming the illness of the employee or the employee's family member;

(b) A police report indicating that the employee or the employee's family member was the victim of stalking, domestic violence, or sexual abuse;

(c) A court order indicating that the employee or employee's family member was the victim of stalking, domestic violence, or sexual abuse;

(d) A signed written statement from a victim and witness advocate affirming that the employee or employee's family member is involved in legal action or proceedings related to stalking, domestic violence, or sexual abuse. The signed statement shall include only the name of the employee or employee's family member who is a victim and the date on which services were sought; or

(e) A signed written statement from a victim and witness advocate, or domestic violence counselor affirming the employee or employee's family member sought services to enhance the physical, psychological, economic health or safety of the employee or employee's family member.

3208.3 If the employer requires a certification, the certification shall be provided upon the employee's return to work or within one business day thereafter.

3209 RELEASE OF INFORMATION

3209.1 Nothing in the Act or this chapter shall require a health care professional to disclose information in violation of section 1177 of the Social Security Act, effective August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6) or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, effective August 21, 1996 (110 Stat. 2033; 42 U.S.C §1320d-2 note).

3209.2 Information provided to an employer pursuant to §§ 3206, 3207, or 3208 shall not be disclosed by the employer, except when such disclosure is:

(a) Requested or consented to by the employee;

(b) Ordered by a court or administrative agency; or

(c) Otherwise required by federal or local law.

3210 CARRYOVER OF PAID LEAVE

3210.1 Unused paid leave accrued in one calendar year shall be carried over to the next calendar year.

3210.2 An employee shall not use more paid leave in one year than the employee accrues pursuant to § 3102.2-4 of this Chapter, unless permitted to by the employer.

3211 PAYOUT OF PAID LEAVE

3211.1 Accumulated paid leave shall not be reimbursed upon the discharge or resignation of an employee.

3212 EFFECT ON CURRENT COMPENSATED LEAVE POLICIES

3212.1 An employer that has a paid leave policy, (for example, paid time off or universal leave) that gives the employee paid leave options to utilize at the employee's discretion, which allow the accrual and usage of leave that are at

least equivalent to the paid leave prescribed in the Act, shall not be required to modify that policy

3212.2 An existing compensated leave policy shall be presumed to be equivalent to requirements of the Act if the policy allows the employee to:

(a) Access and accrue compensated leave at the same rate or greater than the hours of leave provided in § 3201 of this Chapter; or

(b) Use the compensated leave for the same purposes as those set forth in § 3203.

3213 POSTING REQUIREMENTS AND PENALTIES

3213.1 The employer shall post and maintain in a conspicuous place a notice, prescribed and provided by the Mayor, which sets forth excerpts and summaries of the Act and contains information pertaining to the filing of complaints asserting violations of the Act.

3213.2 The employer shall post the notice in English and in all languages spoken by its eligible employees with limited or no-English proficiency as defined in section 2(5) of the of the Language Access Act, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931(5)).

3213.3 An employer who willfully fails to post a notice pursuant to this section shall be assessed a civil penalty of one hundred dollars ($100) per day for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed five hundred dollars ($500) per violation.

3213.4 An employer shall not be liable for failing to post a notice until thirty (30) days after the Mayor provides the notice required by section 10 of the Act to the employer.

3214 EFFECT ON EXISTING EMPLOYMENT BENEFITS

3214.1 The provisions of the Act do not alter the obligation of an employer to comply with any collective bargaining agreement or any employment benefit or plan that provides paid leave rights greater than those established by the Act.

3214.2 Subject to the provisions of section 13 of the Act and § 3216 of this Chapter, a written bona fide collective bargaining agreement shall not waive the paid leave requirements of the Act and this Chapter, unless such collective bargaining agreement provides at least three (3) paid days of leave.

3215 PROHIBITED ACTS

3215.1 No employer or person acting on behalf of an employer shall interfere with, restrain, or otherwise deny the exercise or attempt to exercise of any right provided by the Act.

3215.2 An employer shall not discharge or discriminate in any manner against an employee because the employee:

(a) Opposes any practice by an employer made unlawful by the Act;

(b) Files or attempts to file a claim or charge for violation of the Act;

(c) Institutes or attempts to institute an proceeding under the Act;

(d) Facilitates the institution of a proceeding under the Act;

(e) Provides information or testimony in connection with an inquiry or proceeding related to the Act; or

(f) Uses paid leave in accordance with the Act and this Chapter.

3215.3 The Act shall not be construed to prohibit an employer from creating and enforcing a policy that prohibits the improper use of paid leave or that requires the more frequent certifications from an employee if there is evidence documenting a pattern of abuse of paid leave. A pattern of abuse may be evidenced by the following:

(a) Consistent taking of paid leave without the notice required by the Act;

(b) Consistent taking of leave on days for which vacation or annual leave have been denied;

(c) A pattern of taking paid leave on days where the employee is scheduled to work a shift or perform duties perceived as undesirable, including high customer volume days; or

(d) A pattern of taking paid leave on Mondays, Fridays, or the day immediately preceding or following holidays.

3216 COMPLAINT RESOLUTION

3216.1 A person who believes that any of the rights created by the Act has been improperly denied him or her may file a complaint with the Department of Employment Services in the form and manner prescribed by the Director of the Department. Complaints shall be filed within sixty (60) days after the event on which the complaint is based; provided that no sixty (60) day period

shall commence until the employer has posted the notice required by section 10 of the Act and § 3213 of this Chapter

3216.2 The Director shall review all complaints and shall investigate those complaints which the Director determines require investigation.

3216.3 Complaints shall be investigated and resolved in an expeditious manner consistent with the nature of the complaint. The Director shall make all reasonable efforts to
resolve all complaints within forty-five (45) business days of their filing and shall notify all parties if that time period cannot be met and shall make a good faith estimate of the expected resolution date.

3216.4 In the course of investigating, resolving and deciding complaints, the Director shall have the authority to:

(a) Investigate and ascertain the length of service, hiring dates, paid leave usage requests, certifications provided by employees, and any other issue relating to the rights created by the Act;

(b) Require sworn written statements from employers and employees concerning the issues raised by the complaint; and

(c) Conduct informal investigations, examinations, or meetings at which employers and employees appear, give sworn statements, and answer questions from the Director or the adverse party.

3216.5 Following an investigation, the Director shall issue a decision concerning the complaint. Copies of the decision shall be served on each party at their last known address.

3216.6 A party aggrieved by the Director's decision may appeal the decision as provided in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

3216.7 Complaints shall be investigated and resolved in an expeditious manner consistent with the nature of the complaint.

3216.8 The employer shall maintain records of the accrual, granting and denial of leave pursuant to the Act for a period of three years as generally provided in 7 DCMR § 911.

3217 PENALTIES

3217.1 Except as provided in § 3213.3, an employer who willfully violates the requirements of the Act shall be assessed a civil penalty in the amount of five

hundred dollars ($500) for the first violation, seven hundred and fifty dollars ($750) for the second violation, and one thousand dollars ($1,000) for the third and any subsequent violations.

3217.2 All penalties paid by employers shall be deposited into the General Revenue Fund of the District of Columbia.

3299 DEFINITIONS

When used in this Chapter, the term:

Act – means the Accrued Safe and Sick Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*).

Day – means the length of the employee's customary work day or work shift.

Director – means the Director of the District of Columbia Department of Employment Services, or the Director's designee.

Discharge –means the involuntary severing of the employment relationship by the employer.

Domestic violence – means an intra-family offense as defined in D.C. Official Code § 16-1001(8).

Emergency – means an unexpected or unforeseen event or events which render an en employee unable to contact the employer or communicate the need to access leave accrued under the Act to the Employer as required by Sec. 3206.1, Sec. 3206.2 or Sec. 3206.3. An emergency shall include a personal illness, illness of a family member, or an act of domestic violence or sexual abuse as defined in the Act which requires the employee to seek medical treatment or law enforcement assistance for the employee or other persons covered by the Act.

Employee – means an individual who has been employed by the same employer for at least one (1) year without a break in service except for regular holiday, sick, or personal leave granted by the employer and who has worked at least one thousand (1,000) hours of service with such employer during the previous 12-month period. The term "employee" also includes an individual who meets the foregoing criteria and who is employed by the employer in more than one location and spends more than fifty percent (50%) of his or her working time for his or her employer in the District of Columbia or whose employment is based in the District of Columbia and who regularly spends a substantial part of his or her time working for the employer in the District of Columbia and does not spend more than fifty percent (50%) of his or her work-time working for the employer in any particular state. The term "employee" shall not include: (1) an independent contractor, (2) a student, (3) health care workers who choose to participate in a premium

pay program, or (4) restaurant wait staff and bartenders who work for a combination of wages and tips.

Employer – means (including a for-profit or not-for-profit firm, partnership, proprietorship, sole proprietorship, limited liability company, association or corporation), or any receiver or trustee of such entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee. The term "employer" includes the District of Columbia government.

Non-covered employment position — means (1) an independent contractor, (2) a student, (3) a health care worker who choose to participate in a premium pay program, or (4) restaurant wait staff and bartenders who work for a combination of wages and tips.

Family member — means:

(1) A spouse, including the person identified by an employee as his or her domestic partner, as defined in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3));

(2) The parents of a spouse;

(3) Children (including step-children, foster children, and grandchildren);

(4) The spouses of children (including step-children, foster children, and grandchildren);

(5) Parents (including step-parents);

(6) Brothers and sisters (including step-brothers and sisters and half-brothers and sisters);

(7) The spouses of brothers and sisters (including step-brothers and sisters and half-brothers and sisters);

(8) A child who lives with the employee and for whom the employee permanently assumes and discharges parental responsibility; and

(9) A person with whom the employee shares or has shared, for not less than the preceding of twelve (12) months a mutual residence and with whom the employee maintains a committed relationship, as defined in section 2(1) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code §32-701(1)).

Paid leave – means accrued hours of paid leave provided by an employer for use by an employee in hourly increments during an absence from work for any of the reasons specified in section 3(b) of the Act, for which the employee is paid at the same rate as if the employee were working.

Premium pay program – means a plan offered by an employer by which an employee may voluntarily elect to receive additional pay in lieu of benefits.

Restaurant wait staff and bartenders-means waiters, waitresses, counter personnel who serve customers, bus persons, server helpers, service bartenders and barbacks.

Sexual abuse – means an offense described in the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 *et seq.*).

Student – means a person employed by an employer who:

(1) (A) Is a full-time student as defined by an accredited institution of higher education;

(B) Is employed by the institution at which the student is enrolled;

(C) Is employed for less than 25 hours per week (the number of hours being determined based on the standard or usual work week of the employee); and,

(D) Does not replace an employee covered by the Act; or

(2) Is employed as part of the Year Round Program for Youth as established by the Department of Employment Services.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904), sections 6, 7, and 13 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121,1125; D.C. Official Code §§ 50-2201.03**,** 50-1401.01, and 50-1403.01), section 5 of the Uniform Anatomical Gift Revision Act of 2008, effective April 15, 2008 (D.C. Law 17-145; D.C. Official Code § 7-1531.04), sections 5(a) and 79 of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 122, 139; D.C. Official Code §§ 50-1301.03(a) and 50-1301.79), section 107 of the Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.07), sections 2(d)(2A) and 3(a) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 680; D.C. Official Code §§ 50-1501.02(d)(2A) and 50-1501.03(a)) and Mayor's Order 2007-168, dated July 23, 2007, hereby gives notice of the adoption of the following rules that amend Chapters 1 (Issuance of Driver's Licenses), 3 (Cancellation, Suspension, or Revocation of Licenses), 4 (Motor Vehicle Title and Registration), 7 (Motor Vehicle Equipment), 8 (Safety Responsibility), 30 (Adjudication and Enforcement), and 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The rules: limit the number of times an applicant may take the knowledge and road tests; increase the fee for failure to appear at a scheduled road test; make conforming changes to be consistent with the requirements of the Uniform Anatomical Gift Act; conform the District's motor vehicle regulations with recent statutory and regulatory amendments made by the Department of Motor Vehicles Driver License, Special Identification Card and Vehicle Inspection Amendment Act of 2008, effective September 15, 2008 (D.C. Law 17-219; 55 DCR 7662) by extending the terms of driver's licenses and non-driver special identification cards from five (5) to eight (8) years; mandate driver license revocation for conviction for operating a vehicle while impaired by the consumption of intoxicating liquor; authorize the Director to suspend a driver's license of a District resident whose driving privileges have been suspended by another jurisdiction; add a new section governing the approval of vintage tags on historic vehicles; set the safety requirements for low speed vehicles; clarify that an individual requesting a DMV record pursuant to a court-issued subpoena will be subject to the fees applicable to DMV record requests; allow the Director to revoke a certificate of self-insurance for failing to follow District laws applicable to self-insurers; add the District Department of Transportation as an agency authorized to issue moving and non-moving violations; and add the definition for the term "low-speed vehicle". No comments were received and no changes were made to the text of the proposed rules, as published with a notice of proposed rulemaking in the *D.C. Register* at 57 DCR 3996 on May 7, 2010. The final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 18 (Vehicles and Traffic) of the DCMR is amended as follows:

Chapter 1 (Issuance of Driver's Licenses) is amended as follows:

1. Section 103 (Applications for a Driver's License or Learner's Permit) is amended as follows:

   Section 103.9 is amended by striking "ten dollars ($ 10)" and inserting "thirty dollars ($30)".

2. Section 104 (Examinations of Applicants for Driver's Licenses), is amended as follows:

   a. Section 104.10 is amended by striking the phrase "three (3) examinations within a twelve (12) month period" and inserting the phrase "three (3) written examinations and three (3) road tests within a twelve (12) month period" in its place.

3. Section 108 (Notations on Licenses: Anatomical Gift Act), is amended as follows:

   a. Section 108.1 is amended by striking the phrase "on or after the effective date of the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17- 58)" and inserting the phrase "on or after April 15, 2008" in its place.

   b. Section 108.2 is amended by striking the phrase "the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17-58)" and inserting the phrase "the Uniform Anatomical Gift Revision Act of 2008, effective April 15, 2008 (D.C. Law 17-145; D.C. Official Code § 7-1531.01 *et seq.*) ("Uniform Anatomical Gift Revision Act")" in its place.

   c. Section 108.3 is amended by adding the phrase "or otherwise authorized a statement or symbol indicating that the donor has made an anatomical gift" after the phrase "signed an anatomical gift card".

   d. Section 108.4 is amended by striking the phrase "the Uniform Anatomical Gift Revision Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17-58)" and inserting the phrase "the Uniform Anatomical Gift Revision Act" in its place.

4. Section 110 (Renewal of Driver's Licenses) is amended as follows:

   a. Section 110.1 is amended to read as follows:

      110.1 Unless the Director provides otherwise, the initial term of a driver's license issued after August 16, 2008 and the next renewal term of any driver's license issued before that date, shall expire on the licensee's birth date occurring in the eighth

(8th) year of the license term, and may thereafter be renewed for up to an eight (8)-year period ending on the licensee's birth date.

b. Section 110.3 is amended to read as follows:

110.3 The Director may extend the validity of a driver's license without an additional fee for such additional period or periods as the Director, in his or her discretion, may; provided, that such additional period or periods shall not exceed eight (8) years in the aggregate.

4. Section 112 (Special Identification Cards) is amended as follows:

a. Section 112.14 is amended by striking the phrase "shall not exceed five (5) years" and inserting the phrase "shall not exceed eight (8) years" in its place.

Chapter 3 (Cancellation, Suspension, or Revocation of Licenses) is amended as follows:

1. Section 301 (Mandatory Revocations) is amended as follows:

a. Section 301.1(a) is amended as follows:

i. Insert the phrase "or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor;" at the end.

2. Section 304 (Suspension for Failure to Comply Answer with Traffic Citations) is amended by adding new sections 304.4 and 304.5 to read as follows:

304.4 Pursuant to § 300.7, or under applicable law, the Director may suspend, without a hearing, the license of a resident of the District whose driving privileges have been suspended in another jurisdiction. The Director shall provide at least ten (10) days notice of the effective date of the suspension in the District and shall provide such notice by mail or email to the resident's address as indicated on the Department of Motor Vehicle records.

304.5 The suspension authorized in subsection § 304.4 shall terminate upon proof satisfactory to the Director that the licensee has been reinstated to operate a motor vehicle in the other jurisdiction.

Chapter 4 (Motor Vehicle Title and Registration) is amended as follows:

A new section 435, entitled "Vintage Tags", is added to read as follows:

435 VINTAGE TAGS

435.1 Vintage license tags shall be permitted on historic motor vehicles in place of historic motor vehicle license tags if approved by the Director pursuant to this section.

435.2 A person who seeks to display vintage license tags shall submit an application to the Director by letter, or at the discretion of the Director, by email or through the Department's website.

435.3 The application shall include the applicant's name, address, vehicle information number ("VIN"), make, model, year of manufacture, and a color photograph of the vintage tag. The Director may request the applicant to appear in person with the vintage tag for the purposes of inspection.

435.4 The Director may deny the application if:

(a) The tag does not meet reflective or safety standards as set forth in §§ 422.5 and 422.8;

(b) The tag is illegible;

(c) The letters, numbers, or combination of letters and numbers of the tag is the same as the configuration of letters, numbers, or combination of letters and numbers of any tag either issued or for which application has been made pursuant to § 423;

(d) The Director is unable to verify the tag is from the same year as the model year of the historic vehicle; or

(e) The Director concludes that the use of the vintage tags would adversely impact public safety.

435.5 The Director may rescind or revoke the use of a vintage tag for violation of any District of Columbia law or regulation relating to motor vehicles, or for any reason described in § 435.4.

Chapter 7 (Motor Vehicle Equipment) is amended as follows:

A new section 757, entitled "Low-Speed Vehicles", is added to read as follows:

757 LOW-SPEED VEHICLES

757.1 Low-speed vehicles shall comply with the safety standards set forth in Federal Motor Safety Standard No. 500 at 49 C.F.R. § 571.500.

757.2 The manufacturer's certificate of origin shall clearly identify the vehicle as a low-speed vehicle.

757.3 Aftermarket conversion of manufactured non-compliant vehicles to low-speed vehicles not in compliance with Federal Motor Vehicle Safety Standards is prohibited.

Chapter 8 (Safety Responsibility) is amended as follows:

1. New subsections 801.11 and 801.12 are added to read as follows:

801.11 A request for a certified or uncertified abstract pursuant to a subpoena shall be subject to the fee specified in this section, except if the subpoena is submitted by a governmental entity.

801.12 A fee shall not be imposed for a certified or uncertified abstract if the abstract is requested by a person filing an in forma pauperis petition.

2. Section 807.6 is amended as follows:

a. Paragraph (c) is amended by striking the word "and".

b. Paragraph (d) is amended by striking the period at the end and inserting the phrase "; and" in its place.

c. A new paragraph (e) is added to read as follows:

(e) Failure to comply with all District laws applicable to self-insurers.

Chapter 30 (Adjudication and Enforcement) is amended as follows:

1. Section 3003 (Issuance of Moving and Non-Moving Violations)

a. Subsection 3003.1 is amended as follows:

i. Paragraph (l) is amended by striking the word "and".

ii. Paragraph (m) is amended by striking the period at the end and inserting the phrase "; and" in its place.

iii. A new paragraph (n) is added to read as follows:

(n) District Department of Transportation.

Chapter 99 (Definitions) is amended as follows:

Section 9901 (Definitions) is amended by inserting the following new definition:

> Low-speed vehicle – a four (4)-wheeled motor vehicle whose speed attainable in one (1) mile is more than twenty (20) miles per hour and not more than twenty-five (25) miles per hour on a paved level surface and which has a gross vehicle weight rating of less than three thousand (3,000) pounds.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 945 IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505 (a) and 34-1518 of the District of Columbia Official Code,[1] of its final rulemaking action taken on June 11, 2010, in Order No. 15837. The Commission repeals the current Chapter 9 in its entirety and adopts the following provisions for Chapter 9 of Title 15 of the District of Columbia Municipal Regulations ("DCMR") governing net energy metering in the District of Columbia.[2]

2. The Commission published a Notice of Proposed Rulemaking ("NOPR") on February 26, 2010 at 57 *D.C. Reg.* 1777-1782 (2010).[3] Only the Office of People's Counsel ("OPC") filed Comments in response to the February 26, 2010 NOPR.[4] On June 11, 2010, Order 15837 was issued addressing the comments and adopting the final regulations. The final rules will become effective upon the publication of this Notice of Final Rulemaking ("NOFR") in the *D.C. Register*.

CHAPTER 9 NET ENERGY METERING

900 GENERAL PROVISIONS

900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering provisions of the "Retail Electric Competition and Consumer Protection Act of 1999," as amended, and the Clean and Affordable Energy Act of 2008 ("CAEA").

900.2 This chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing Net Energy Metering, including eligibility for participating in net energy metering, a bill

[1] D.C. Code § 2-505 (a) (2001 Ed.) and D.C. Code § 34-1518 (2001 Ed.).

[2] *See* D.C. Code § 34-1501 (15) (2009 Supp.), which sets forth new capacity limits for net metering participation, which required amendment of the Chapter 9.

[3] *F.C. 945*, 57 *D.C. Reg.* 1777-1782 (February 26, 2010).

[4] *F.C. 945*, Comments of the Office of the People's Counsel on the February 26, 2010 Notice of Proposed Rulemaking Regarding Chapter 9 – Net Metering Rules ("OPC's Comments"), filed March 29, 2010.

crediting mechanism, net energy billing requirements for participants, net metering-related equipment requirements, a standard contract requirement, and safety and performance standards. This chapter shall be cited as the "District of Columbia Net Energy Metering Rules."

900.3 The provisions of this chapter are promulgated pursuant to the authority set forth in Section 34-1518 of the D.C. Official Code.

901 ELIGIBLE CUSTOMER-GENERATORS

901.1 Eligible customer-generators utilizing renewable resources, cogeneration, fuel cells, or microturbines may elect and shall be afforded the opportunity to participate in net energy metering. An eligible customer-generator's facility shall meet all applicable safety and performance standards established by the National Electrical Code ("NEC"), National Electrical Safety Code ("NESC"), the Institute of Electrical and Electronics Engineers ("IEEE"), Underwriters Laboratories ("UL") and any other relevant standards specified by the Commission.

902 NET ENERGY BILLING AND CREDITING FOR CUSTOMERS OF COMPETITIVE ELECTRICITY SUPPLIERS

902.1 A customer that has elected net energy billing may obtain generation service from any Competitive Electricity Supplier that agrees to provide service on a net energy basis. In such circumstances, the net inflow or outflow of electricity supplied to or by the customer-generator will be billed or credited at the Competitive Electricity Supplier's energy rate specified in the agreement between the customer-generator and the Competitive Electricity Supplier. The Competitive Electricity Supplier shall be responsible for calculating the net energy bill (or credit) amount for each billing period.

902.2 For customer-generators purchasing generation and transmission service from a Competitive Electricity Supplier, if the customer-generator's kilowatt-hour usage during the billing period exceeds the kilowatt-hours generated by the customer-generator during that period, the customer-generator will be billed for the net energy delivered by the Electric Company at the full retail distribution rate for distribution service. In no event shall distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

902.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator's facility exceeds the customer-generator's kWh usage during the billing period (excess generation), the customer-generator's next bill will be credited by the Electric Company for the excess generation at the full retail distribution rate. The credit for excess generation shall be expressed as a dollar value on the customer-generator's bill. If the full credit for excess generation is

not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted. In no event shall such distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

902.4 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer and/or demand charges, as applicable.

903 NET ENERGY BILLING AND CREDITING FOR SOS CUSTOMERS

903.1 This section governs the billing practices applicable to participating net energy billing customers receiving SOS generation service during a billing period. In no event shall transmission or distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

903.2 If the value of the generation (generation value) used to supply the customer's usage exceeds the generation value of the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed for the difference between the generation value of the energy consumed and the energy supplied.

903.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 1,000 kilowatts, if the generator value of the electricity generated by the customer's net metering facility exceeds the generation value of the electricity used to supply the customer's usage during the billing period, the customer-generator's next bill will be credited for the difference between the generation value of the energy supplied and the energy consumed. The credit for the difference in generation value shall be expressed as a dollar value on the customer-generator's bill. If the full credit is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted.

903.4 If the customer's kWh usage exceeds the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed transmission and distribution related usage charges on the net energy supplied to the customer during the billing period.

903.5 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator's facility exceeds the customer-generator's kWh usage during the billing period (excess generation), the customer-generator's next bill will also be credited for

the excess generation at the full retail rate for transmission and distribution service applicable during the billing period in which the excess generation occurred. The credit for excess generation shall be expressed as a dollar value on the customer-generator's bill. If the sum of the full transmission and distribution credit for excess generation and the generation value credit is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted. In no event shall such transmission- and distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

903.6 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer, demand and/or minimum charges, as applicable.

904 NET METERING-RELATED EQUIPMENT

904.1 The metering equipment installed for net energy metering shall be capable of measuring the flow of electricity in two directions.

904.2 Nothing in this section shall prohibit the Electric Company from installing additional meters to separately record electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and supplied to the electric grid by the eligible customer-generator. However, no customer-generator that elects to be billed on a net energy basis shall be charged directly for the cost of the additional meters or other necessary equipment.

905 STANDARD CONTRACT

905.1 The Electric Company shall develop a standard contract that implements these rules, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter, as well as with the Energy Policy Act of 2005 and the Commission's Interconnection Rules under Chapter 40 of Title 15 of the DCMR.[5]

906 WAIVER

906.1 Upon request of any person subject to this chapter or upon its own motion, the Commission may, for good cause, waive any requirement of

[5] Energy Policy Act of 2005, Pub.L. 109-58, 119 Stat. 594 (2005); *F.C. 1050, 56 D.C. Reg.* 001415-001487 (February 13, 2009) to be codified as 15 D.C.M.R. Chapter 40, District of Columbia Small Generator Interconnection Rules ("DCSGIR").

this chapter that is not required by statute or inconsistent with the purposes of this chapter.

999 DEFINITIONS

When used in this chapter; the following terms and phrases shall have the following meaning:

"Capacity" means the maximum output, expressed in kilowatts, of an electric generator under specific conditions designated by the manufacturer, as indicated on a nameplate physically attached to the generator.

"Commission" means the Public Service Commission of the District of Columbia.

"Competitive Electricity Supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale or retail customers: The term excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution. system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B)(1) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (2) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (a) Take title to the electricity; (b) Market electric services to the individually-metered tenants of his or her building; or (c) Engage in the resale of electric service to others; (C) Property owners who supply small amounts of power, at cost, as accommodation to lessors or licensees of the property; and (D) A consolidator.

"Customer-generator" means a residential or commercial customer that owns (or leases or contracts) and operates an electric generating facility that: (a) has a capacity of not more than 1000 kilowatts; (b) uses renewable resources, cogeneration, fuel cells, or microturbines; (c) is located on the customer's premises; (d) is interconnected with the Electric Company's transmission and distribution facilities; and (e) is intended primarily to offset all or part of the customer's own electricity requirements.

"Electric Company" means the company that provides distribution service.

"Eligible customer-generator" means a customer-generator whose net energy metering system for renewable resources, cogeneration, fuel cells, and microturbines meets all applicable safety and performance standards.

"Full Retail Distribution Rate" means the per kilowatt-hour distribution charges applicable to the net energy billing customer during the billing period.

"Full Retail Transmission Rate" means the per kilowatt-hour transmission charges applicable to the net energy billing customer during the billing period.

"Generation value" means the product of the applicable SOS kilowatt-hour rate times the number of kilowatt-hours consumed and/or supplied, during the time period(s) associated with such usage and/or supply.

"Net energy metering" means the difference between the kilowatt-hours consumed by a customer-generator and the kilowatt-hours generated by the customer-generator's facility over any time period determined as if measured by a single meter capable of registering the flow of electricity in two directions.

"Net energy billing" means a billing and metering practice under which a customer-generator is billed on the basis of net energy over the billing period.

"Standard Offer Service Provider" means a provider of standard offer service chosen pursuant to Chapter 29 of the Commission's rules.